

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5250 of 1985

with

SPECIAL CIVIL APPLICATION No 4408 of 1986

with

SPECIAL CIVIL APPLICATION NO.3988 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

and

MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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JIVRAJ NANJI

Versus

STATE OF GUJARAT

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Appearance: IN ALL THE THREE PETITIONS

MR PV HATHI for Petitioners

MR PREMAL JOSHI AGP for Respondent No. 1, 2

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CORAM : MR.JUSTICE R.BALIA. and

MISS JUSTICE R.M.DOSHIT

Date of decision: 30/11/1999

ORAL JUDGEMENT

The present three petitions raise identical issues in respect of compensation payable to the petitioners in each case in the matter of acquisition of the agricultural land for Malpara Irrigation Scheme of the surrounding villages. Infact, the lands were actually taken possession in lieu of compensation agreed to between the land holders and the Land Acquisition Officer at the relevant time before acquisition proceedings were resorted to.

The principal contention raised in all the three petitions relating to the acquisition of agricultural lands of the vicinity and around the same village is that in respect of pending and anticipated land acquisition proceedings, a consensus was reached between the persons whose lands were being required or were likely to be subjected to the acquisition because of the said scheme, and according to which the land owners have agreed to accept a compensation at the rate of Rs.9600/- per Acre for irrigated land and Rs. 5600/- for unirrigated land. In addition to that compensation, it was further agreed that they will be paid a solatium at the rate of 15% then prevailing statutory rate of solatium and development charges at the rate of 20%. Before the acquisition proceedings have commenced, in all the cases, compensation amount was already paid at the rate of Rs.9600/- per Acre. However, no amount of solatium as allegedly agreed between the parties on 12th June, 1982, was paid. The stand of the respondents was that vide another decision arrived at between the Land Acquisition Officer and the persons interested in the lands, it has been agreed that the aforesaid rate of Rs. 9600/- would be inclusive of solatium and the development charges and the Award shall be made accordingly. This dispute was made subject matter of Special Civil Application No. 5916/83-Devrajbhai Chhaganbhai & ORS VS The State of Gujarat & ORS. In the said case, pursuant to the Notice issued by the court, appearance was made on behalf of the State Government. The court opined that on perusal of the agreement, it was clear that the State Government was under obligation to pay compensation for the land situated within the revenue limits of village Malpura at the rate of Rs.5600/- per Acre for Jiyarat lands and Rs. 9600 per Acre for irrigated land which works out at Rs.140/- per Acre for unirrigated and Rs. 240/- per Acre for irrigated land respectively. The only dispute between the parties was obligation of paying additional compensation for the development of the lands and the solatium which has been clearly agreed and undertaken by the Special Land Acquisition Officer that the land owners

concerned would be entitled to additional compensation and the solatium at the rate of 15%.

Coming to the pleas about the agreement being for the rate inclusive of additional claim on account of development charges and solatium, the court observed - " It is no doubt true that in the minutes annexed to the reply affidavit filed on behalf of the State Government and produced before us it is stated that a decision has been taken in the said meeting that compensation would be paid for the lands situated within the revenue limits of Malpara village at the rate of Rs. 140/- per Are and Rs. 240/- per Are for Jiyarat and irrigated lands respectively inclusive of solatium. It is difficult for us to appreciate that how the decision taken in the meeting and agreed to by the representatives of the villagers can bind the land owners concerned ". With this finding, the court applied the principle of promissory estoppel and the State Government can not even by obtaining consent of the representatives of the villagers concerned to the decision taken by the meeting subsequently held on 14th September, 1982, wherein it was obligatory to pay compensation, additional compensation and the solatium. In that view of the matter, therefore the petition should be allowed and the State Government should be directed to pay additional compensation at the rate of 20% of the amount compensation and also solatium at the rate of 15% on the amount of compensation and additional compensation together with interest at the rate of 4 1/2% PA from the date of taking over possession till payment. The petitioners' claim to interest at 12% which is the prescribed rate, was declined and interest at the rate of 4 1/2% was awarded.

The petitioners had also agreed to accept the said rate for the intended acquisition of their lands viz. compensation to the paid at the rate of Rs.120/- for non-irrigated land and Rs. 240/- for irrigated land and that over and above the said rate, the claimants will be paid 15% solatium and 25% for development charges by way of additional compensation. The claimants will not be entitled to raise any dispute with the State Government or in any court of law on the issue of compensation or on any other issues. The interest at the rate agreed between the parties will be paid from the date of taking possession till the agreed compensation amount was paid. The petitioners had also agreed to accept the said rate for the intended acquisition of their lands, when the other agriculturists entered into a written agreement with the respondent no.2 on 12th June, 1982. All the agriculturists of the village Malpara were not paid

solatium, development charges and interest as agreed. Those persons whose lands were acquired by earlier Notification were executed on 12th June, 1982,. Such agreements though decided to be executed, were not actually executed inspite of the possession having already been taken over at the time of taking over possession. But their signatures on the agreement forms were taken by the concerned officers later on by stating that the agreements were in the same terms as were executed by other agriculturists of Malpara in respect of the agreement executed on 12th June, 1982. As referred to above, the Special Civil Application was filed on 27th September, 1983 contending interalia that they were entitled to solatium, development charges and interests over and above the rate fixed by the Government for the compulsory acquisition of their lands. Prior to filing of the petition, the representation was also made to the State Government in March 1983 and May 1983 for the purpose of claiming the amount of additional compensation, solatium and interest as per the agreement dated 12th June 1982. In case of the present petitioners, the signatures on the agreement forms were taken by the Government through the officers of the respondent no.2 without filling any details and total amount of compensation, the rate of the acquired land etc. The petitioners were given to understand by the respondent no.2, who had taken over the charge from the earlier Land Acquisition Officer, that the agreement was to be made in the same form as was done with the other agriculturists and that they will be paid the same amount which ultimately the Government would agree to pay to all other agriculturists whose lands were acquired for the same Irrigation Scheme.

With this background, the present petitions have been filed giving different dates of handing over possession and receipt of amount in each case and different dates of Awards having been made after the respondents resorted to land acquisition proceedings. The common factor in each case is that the possession has been taken over and compensation amount has been paid at the rate stated above before commencement of the acquisition proceedings and the commencement of acquisition proceedings have only been made after the completion of the suit formality viz. taking over possession and payment of compensation. The petitioners confine their claim to the extent that they be treated equally in the matter of payment of compensation in terms of agreement which has been found by the court binding on the State Government, and was not affected by the Resolution dated 14th September, 1982. Averments have

also been made about the forms of agreement having been taken in blank and details having been filled up subsequently to make out a case of payment of compensation at the aforesaid rate by bifurcating the same into the rate at which price of land has been valued and solatium to which they became entitled in terms of agreement i.e. rate + 15% solatium + 25% development charges make the component part of the rate of land which is common in each case viz. Rs.240/- for irrigated land and Rs. 140/- for non-irrigated land. The respondents pleaded that the petitioners have entered into separate agreement later on. They denied having obtained blank forms and that the petitioners are not entitled to take benefit of the decision of this court referred to above in Special Civil Application No. 5916/83, dated 24th September, 1984. Reply has been filed only in Special Civil Application No. 5250/85 and in other two petitions no reply has been filed to controvert the contentions raised therein. In these circumstances, the court directed the respondents to produce the record of the proceedings for its perusal. The following facts emerge from the records :

- (a) In all cases of the petitioners, the alleged agreement executed by the petitioners is not available, but only in some of the cases the agreements are present on the record.
- (b) The agreement which is in cyclostyled form, refers to payment of compensation in addition to additional compensation and solatium in addition to the price of the land agreed upon. In some of the forms, details have been filled. But in large number of the petitioners, the blank forms with the signatures of the petitioners are available on the record confirming the assertions made by the petitioners that the signatures were obtained on blank forms and the details have been filled later on in some cases wherever they are available.
- (c) The forms are in identical terms as have been used in Malpura and other concerned villages.
- (d) The Award made in each case does not make reference to the Award made in terms of the agreement, but makes reference to Government letter dated 23rd January, 1983, mentioning therein the rate of the land at which the compensations were to be awarded to the villagers whose lands fall within the villages of Malpara,

Gadhada and Ghogha Samadi, under the Malpara Irrigation Scheme uniformly at the rate of Rs.240/- for irrigated land and Rs.140/- for non-irrigated land per Are. The fixation of this rate is referred to in the Resolution dated 14th September, 1982, and on the basis of which the claim of the petitioners in Special Civil Application No. 5916/83 was sought to be contested by the respondents to deny that the claim of additional compensation and solatium in addition to the land price agreed to between the parties, but which was not accepted by the court to be binding on the land owners unless they had agreed independently in the acquisition proceedings. In the aforesaid circumstances, the conclusion is irreversible. Therefore, the purpose of acquisition of land for Malpara Irrigation Scheme for the lands situated in Malpara, Gadhada and Ghogha Samadi, an uniform rate of the land price was notified by the Government to be adopted under the agreement dated 14th September, 1982 and that has been given effect to under the Award. The Award itself does not say that any agreement was executed in respect of the lands in question between the land owners and the Land Acquisition Officer. On the contrary, the Award says that since the Government has notified the rate of land after seeking agreements from the agriculturists, there is no question of their raising any objection thereto, nor they can seek reference to these recommendations.

This position leads us to the situation where if the Award is said to be founded on the rate agreed by the land-holders on 14th September, 1982, then, according to the finding reached by this court by examining the Resolution dated 14th September, 1982, and the agreements between the land-holders on 12th June, 1982, the said agreements by the representatives of the villagers was not binding on the agriculturists and no benefit can be derived therefrom by the Land Acquisition Officer in the matter of fixing the compensation. In that case, the compensation can not be determined by the agreement. Except to the extent held by the Court in the aforesaid decision viz. the amount of the land price is Rs.140/per Are for non-irrigated land and Rs.240/- per Are for irrigated land, exclusion of additional compensation, solatium and interest agreed between the parties to which the petitioners are entitled to. Alternative, it can only be pleaded that the Award was not an agreed Award,

but the Land Acquisition Officer acting on the material viz. Government letter dated 23rd January, 1983, has on his own fixed the land price at Rs.240/- per Are and Rs. 140/- per Are respectively for the irrigated land and non-irrigated land. In absence of the agreement, no price of land exclusive of solatium could be fixed by the Land Acquisition Officer. In that event, under the provisions of the Act, he was bound to fix the price of the land and compensation payable under section 31 of the Act separately and then to award solatium in addition thereto as per the provisions of the statute. In either case, the petitioners become entitled to additional compensation over and above the price of land fixed under the Award. Since the fact that the land price was fixed at the aforesaid rate is not in dispute and the claim to additional compensation is confined to the terms of the agreements we are inclined to accept the petitions for grant of that relief. It may be pointed out that but for this claim in each case, the Award having been made after 30th April, 1982 by the Land Acquisition Officer, if the Award is not held to be as per the agreed terms, the petitioners would be entitled to additional benefit available under the Land Acquisition Act as amended by the Land Acquisition (Amendment) Act, 1994. As in Special Civil Application No. 5916/83 the order by this court has been made on 24th September, 1984, i.e. before the Act has already come into force, the amending Act has actually commenced and the court has granted the relief on the basis of considering the question of additional compensation in terms of the amended provisions, therefore, the same do not call for consideration. We are, therefore, in the facts and circumstances of the present case, following the earlier decision in Special Civil Application No. 5916/83, decided on 24th September, 1984, allow these petitions in the same terms. The State Government is directed to pay additional compensation at the rate of 20% of the amount of compensation and also solatium at the statutory rate of 15% on the amount of compensation and additional compensation together with interest at the rate of 4 1/2% PA from the date of taking over possession till payment within eight weeks from the date of receipt of writ of this court. The amount of compensation shall be determined at the agreed rate of Rs. 240/- per Are for irrigated land and at the rate of Rs. 140/- per Are for non-irrigated land. The fact that the land is situated in three different villages will not affect the determination of agreed price in as much as the very Government letter on which reliance has been made by the Land Acquisition Officer for determining the land price envisages uniform rate of payment of compensation in

three villages viz. Malpara, Gadhada and Ghogha Samadi.  
The present petitions arise out of the lands situated in  
the aforesaid three villages and not out side. In the  
facts and circumstances of the case, there shall be no  
order as to costs.

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JOSHI